

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC MEDIATE, an individual,  
Plaintiff,

v.

CITY OF SAN DIEGO, a municipal  
corporation, SAN DIEGO POLICE  
OFFICER DANIEL LEACH,  
previously named as BRIAN  
LEACH,

Defendants.

Case No. 12cv2294-BEN (JMA)

**ORDER ON JOINT MOTION  
REGARDING PLAINTIFF'S  
"PITCHES" REQUEST TO  
DOCUMENTS  
[DOC. NO. 28]**

Pursuant to the Court's *Procedures for Obtaining Internal Law Enforcement Documents*, the parties have filed a Joint Motion for Determination of Discovery Dispute regarding the production of internal law enforcement documents by Defendants City of San Diego ("the City") and Brian Leach ("Leach") to Plaintiff Eric Mediate ("Mediate"). Doc. No. 28. Defendants also submitted two binders of all documents listed on its "Privilege Log of Responsive Documents to Request for Production Nos. 1 & 2/3, 7 & 8" " to the Court for *in camera* review. The Court has now reviewed the joint motion and subject documents. Based upon the *in* //

1 camera review and the Court's evaluation of the parties' arguments, the  
2 Court issues the following order.

3 **I. BACKGROUND**

4 This action is brought under 42 U.S.C. § 1983 against the City and  
5 Leach by Mediate. Mediate alleges that on September 24, 2010, while  
6 attending a San Diego Padres game at Petco Park, San Diego police  
7 officers and Petco Park security escorted Mediate to a holding cell in the  
8 park, after receiving a complaint that Mediate's group was being loud and  
9 obnoxious. Doc. No. 1, ¶ 6; Gilliland Dec'l ¶ 3. Mediate alleges that while  
10 he was in the holding cell, Leach threw him twice across the cell, headfirst  
11 into the cell walls. *Id.* Leach is alleged to have reported that Mediate was  
12 injured when he "slipped." Gilliland Dec'l ¶ 3.

13 **II. DISCUSSION**

14 Mediate presently moves the Court to compel the production of  
15 documents identified in Defendants' privilege log, pursuant to the stipulated  
16 protective order in this action. Doc. No. 28 at 5. The documents at issue  
17 include records relating to the Internal Affairs ("IA") investigation of the  
18 subject incident, disciplinary actions taken by the San Diego Police Depart-  
19 ment as to Leach, and records of non-party complaints regarding Leach.

20 Defendants object to the release of this information on the basis that  
21 it is confidential and is protected from production under federal and Califor-  
22 nia state privacy laws and the official information privilege. Doc. No. 28 at  
23 10-11. Defendants also object to Mediate's document request on the basis  
24 it is overly broad in that it calls for the production of I.A. records dating back  
25 to 1997, regarding events that transpired in 1995, over fifteen years before  
26 the subject incident. Doc. No. 28 at 11. Defendants request that any  
27 information ordered to be produced by the Court be produced pursuant to  
28 the parties' stipulated protective order. Doc. No. 28 at 9-10. Defendants

also request that any personal information of officers and any non-party personal information be redacted prior to disclosure. Doc. No. 28 at 11.

### A. Legal Standards

Federal Rule of Civil Procedure 26 states:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

Fed. R. Civ. P. 26(b)(1). The scope of discovery under the Federal Rules is extremely broad. See, e.g., Kelly v. City of San Jose, 114 F.R.D. 653, 668 (N.D. Cal. 1987). “The party who resists discovery has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.” Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D. Cal. 1998).

“[I]n federal question cases where pendent state claims are raised the federal common law of privileges should govern all claims of privilege raised in the litigation.” Perrignon v. Bergen Brunswick Corp., 77 F.R.D. 455, 459 (N.D. Cal. 1978). “State privilege doctrine, whether derived from statutes or court decisions, is not binding on federal courts in these kinds of cases.” Kelly, 114 F.R.D. at 655.

With respect to a party's assertion of privacy rights as a means to protect documents from discovery, federal courts ordinarily recognize that a constitutionally-based right of privacy can be raised in response to discovery requests. Soto v. City of Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995). The resolution of a privacy objection involves a balancing of the need for the information sought against the privacy right asserted. Id.

1 (citing Perry v. State Farm Fire & Cas. Co., 734 F.2d 1441, 1447 (11th Cir.  
2 1984)). “In the context of the disclosure of police files, courts have recog-  
3 nized that privacy rights are not inconsequential.” Soto, 162 F.R.D. at 616.  
4 “Federal courts should generally give some weight to privacy rights that are  
5 protected by state constitutions or state statutes.” Kelly, 114 F.R.D. 653,  
6 656 (N.D. Cal. 1987). “However, these privacy interests must be balanced  
7 against the great weight afforded to federal law in civil rights cases against  
8 police departments.” Soto, 162 F.R.D. at 616.

9 Federal common law recognizes a qualified privilege for official  
10 information. Kerr v. United States Dist. Ct. for the Northern Dist. of Cal.,  
11 511 F.2d 192, 198 (9th Cir. 1975). The discoverability of official documents  
12 is determined under the “balancing approach that is moderately pre-  
13 weighted in favor of disclosure.” Kelly, 114 F.R.D. at 661. The party  
14 asserting the privilege must properly invoke the privilege by making a  
15 “substantial threshold showing.” Id. at 669. The party must file an objec-  
16 tion and submit a declaration or affidavit from a responsible official with  
17 personal knowledge of the matters attested to in the affidavit. Id. The  
18 affidavit must include: (1) an affirmation that the agency has generated or  
19 collected all of the subject material and that it has maintained its confiden-  
20 tiality; (2) a statement that the official has personally reviewed the material in  
21 question; (3) a specific identification of the governmental or privacy inter-  
22 ests that would be threatened by disclosure of the material to the plaintiff  
23 and/or his or her attorney; (4) a description of how disclosure subject to a  
24 carefully crafted protective order would create a substantial risk of harm to  
25 significant governmental or privacy interests; and (5) a projection of how  
26 much harm would be done to the threatened interest or interests if disclo-  
27 sure were made. Id. at 670.

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1 **B. Relevance**

2 Records relating to the subject incident, including records of the I.A.  
3 investigation and disciplinary action taken as to Leach, are indisputably  
4 relevant. See Kelly, 114 F.R.D. at 665-66 (stating that internal affairs  
5 investigations, including the statements that go into such reports and the  
6 opinions and recommendations that conclude them, are “presumptively  
7 discoverable”).

8 Likewise, records of other disciplinary actions taken by the San Diego  
9 Police Department as to Leach, and records of non-party complaints  
10 regarding Leach are generally relevant. See Soto, 162 F.R.D. at 620.  
11 Such information “may be crucial to proving [a] [d]efendant’s history or  
12 pattern of such behavior.” Id. Information of this type may also be relevant  
13 on issues of “credibility, notice to the employer, ratification by the employer  
14 and motive of the officers.” Hampton v. City of San Diego, 147 F.R.D. 227,  
15 229 (S.D. Cal. 1993). Furthermore, such information may be relevant to  
16 the issue of punitive damages, as the “information may lead to evidence of  
17 a continuing course of conduct reflecting malicious intent.” Id. Accordingly,  
18 the Court finds that the documents at issue are generally relevant to Medi-  
19 ate’s claims in this case.

20 **C. Scope of Time**

21 The documents sought by Mediate include records relating to  
22 disciplinary actions taken as to Leach in 1995 and 1997, and which  
23 concern unrelated events that occurred approximately fifteen and sixteen  
24 years prior to the subject incident. The documents include Exhibits 8-13,  
25 Disciplinary Package, November 19, 1997; Exhibits 8, 14-23, Disciplinary  
26 Package, February 21, 1995; Exhibit 24, September 5, 2000 Request re:  
27 Disciplinary Files; and Exhibit 25, November 25, 1999 Listing of all Disci-  
28 plinary Action for Employee. The events that gave rise to the documents

1 occurred too remote in time to be discoverable in this case. See, e.g.,  
 2 Hogan v. Robinson, 2006 WL 1049979, at \*6 (C.D. Cal. 2006) (ordering  
 3 production of similar documents for a five year time period). Thus, these  
 4 documents may be withheld from production.

#### 5 **D. Official Information Privilege**

6 Although the official information privilege is asserted for all the  
 7 documents at issue, Defendants have not submitted a declaration or  
 8 affidavit from a responsible official in support of the privilege claim. Be-  
 9 cause a threshold showing has not been made for these documents, the  
 10 privilege has not been properly invoked and is not a basis for withholding  
 11 documents from production. Kelly, 114 F.R.D. at 669. The Court, therefore,  
 12 turns its attention to Defendants' objections based on privacy.

#### 13 **E. Privacy**

14 As set forth above, resolution of a privacy objection requires a  
 15 balancing of the need for the information sought against the privacy right  
 16 asserted. Here, the Court finds Plaintiff's need for the information sought is  
 17 great. This information is unlikely to be available from any source other the  
 18 Defendants' records. As the court in Kelly stressed, there is a strong public  
 19 interest in uncovering civil rights violations of the type at issue in this case.  
 20 Soto, 162 F.R.D. at 617; Kelly, 114 F.R.D. at 667. After considering "the  
 21 great weight that is afforded to federal civil rights laws" (see Soto, 162  
 22 F.R.D. at 617) and the case law discussed above, the Court finds the  
 23 privacy interests asserted by Defendants with respect to these documents  
 24 on the whole are outweighed by Plaintiff's need for the information. More-  
 25 over, a stipulated protective order was entered in this case which limits the  
 26 dissemination of any documents ordered disclosed. See Doc. No. 30. The  
 27 protective order and, as discussed below, the redaction of any highly  
 28 personal information for which Plaintiff has not shown a need, will amply

1 protect Defendants' privacy interests. See, e.g., Soto, 162 F.R.D. at 616  
 2 (stating that "[a] carefully drafted protective order could minimize the impact  
 3 of . . . disclosure").

#### 4 **F. Redactions**

5 Defendants request the personal information of Leach and other  
 6 officers, as well as non-party personal information, be redacted prior to  
 7 production. To the extent personal information of Leach or other law  
 8 enforcement officers is contained in the documents ordered to be  
 9 produced, i.e., home addresses, telephone numbers, family members, etc.,  
 10 or the personal information of other non-parties, i.e. license plate informa-  
 11 tion, social security numbers, etc., such information may be redacted prior  
 12 to production, as Plaintiff has not shown a need for such information.

#### 13 **III. CONCLUSION**

14 Based on the foregoing, and pursuant to the Court's *in camera*  
 15 review, the Court **ORDERS** Defendants to produce all documents listed in  
 16 Defendants' privilege log that have not previously been produced, with the  
 17 exception of Exhibits 8-13, Disciplinary Package, November 19, 1997;  
 18 Exhibits 8, 14-23, Disciplinary Package, February 21, 1995; Exhibit 24,  
 19 September 5, 2000 Request re: Disciplinary Files; and Exhibit 25, Novem-  
 20 ber 25, 1999 Listing of all Disciplinary Action for Employee. Personal  
 21 information of Leach, other law enforcement officers, and other non-parties  
 22 may be redacted consistent with Section II. F, above. If, after receipt of the  
 23 documents, Mediate questions Defendants' redaction of a document(s),  
 24 counsel are to meet and confer regarding the particular redaction(s).

25 All documents shall be produced to Plaintiffs within ten days of the  
 26 date of this Order and shall be subject to the Protective Order entered by  
 27 the Court on March 3, 2014.

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1 Defendants shall contact the undersigned's chambers at (619) 557-  
2 5585 to make arrangements to retrieve their documents.

3  
4 **IT IS SO ORDERED**

5  
6 **DATED: April 25, 2014**

7   
8 **Jan M. Adler**  
9 **U.S. Magistrate Judge**